

Minority Media and Telecommunications Council

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July 12, 2011

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication, MB Docket No. 09-182 (2010 Quadrennial Review), MB Docket No. 07-294 (Diversity Proceeding), ET Docket No. 10-235 (Innovation in Broadcast Television Bands Proceeding), EB Docket No. 04-296 (Emergency Alert System), and MM Docket 98-204 (Equal Employment Opportunity)

Dear Ms. Dortch:

This reports on two meetings held July 11, 2011: (1) Thomas Reed, Director of the Office of Communications Business Opportunities and Carolyn Fleming, Senior Deputy Director of OCBO; (1) Davis Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Clyburn and Louis Peraertz, Legal Advisor for Wireless, International, and Public Safety to Commissioner Clyburn. Representing MMTC at both meetings were Julia Johnson, Treasurer, Jacqueline Clary, Fellow, and myself.

Attached is a document, "Seven Proposals on Broadcast Regulation," that was distributed and discussed at these meetings.

I elaborated upon the handout by noting:

- The seven proposals should be read as a package rather than individual proposals because together they can greatly impact minority ownership, employment, and diversity within the media industry. Considered as a package, they address each element of diversity – access to capital, spectrum, employment and information.
- In Prometheus Radio Project v. FCC (3d Cir., July 7, 2011), the Court vacated several FCC decisions and retained jurisdiction. This means that the court is impatient with the FCC's failure to act to effectively promote diversity.

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- The FCC should demonstrate support for the tax certificate policy's restoration, since this policy was so effective in advancing diversity. In the second meeting with members of Commissioner Clyburn's staff, we noted that the FCC should work with the White House to determine how a tax certificate could be worked into a plan to incentivize broadcasters to participate in incentive auctions.
- Each of the activities suggested in the menu of activities justifying a waiver of structural rules for companies whose actions "incubate" an SDB would require a significant commitment of resources and yield significant diversity.
- During the meeting with members of Commissioner Clyburn's staff we discussed how the eligible entity standard, in the proposal for clarification that eligible entities have 18 months for major modifications, should be changed from small business to a less dilute standard once the FCC enacts one.
- Either the Diversity Committee (through a focused subcommittee) or a new advisory committee should examine the best use for TV Channels 5/6.
- Applying civil rights regulations across all FCC regulated industries and creating a new Civil Rights branch of the Enforcement Bureau would help alleviate issues surrounding one industry thinking it is getting singled out for regulation. In the first meeting with OCBO, we also discussed how civil rights in the communications industry needs a global push for all industries to get on board, in a manner analogous to how realtors banded together to enforce fair housing in the early 1970s. If the FCC applies all apply civil rights regulations to all industries, there will be more overall buy in.
- Relaxation of the foreign ownership policy would provide struggling broadcasters with capital and open the door for potential reciprocal investment in other countries.
- The FCC should issue an NPRM on multilingual emergency broadcasting. The NPRM should not look like a Notice of Inquiry, but should instead contain specific proposals that get to the heart of the issue on how to ensure that emergency information immediately reaches those who cannot speak English.

Respectfully submitted,

David Honig

David Honig
President and Executive Director

Attachment: Seven Proposals on Broadcast Regulation



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Seven Proposals on Broadcast Regulation

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These seven proposals are drawn from a list of 72 proposals (MMTC, May 11, 2010) pending before the Commission in rulemakings and other proceedings.

Each of the seven proposals has these attributes:

- High impact on minority ownership, employment, or service by the broadcast media
- Absence of significant opposition
- Ease of adoption
- Ease of implementation.

They are offered as a package that, taken as a whole, would likely be met with industry and civil rights organization consensus.

1. Reinstate and expand the Tax Certificate Policy [proposal 72].

- **REQUESTED ACTION:** Designate a staff team to coordinate with the White House on the design of legislation.

2. Structural rule waivers for companies that take actions to "incubate" (i.e., engage in actions that enhance radio station ownership opportunities) SDBs (the "Minority Ownership Incubation Proposal") [proposal 20]. The local radio ownership rule would be waived as necessary (including waiver of the overall caps as described below and/or the subcaps) in order to allow the ownership of one station above the applicable limits for each qualifying "incubator" activity that a radio broadcaster engaged in. The qualifying activity would occur in the same market where the transaction requiring the waiver was to occur or in a market of the same or larger size (i.e., if the incubating action occurred in market #25, the waiver-requiring transaction could take place in market #25 or any market smaller than market #25). Owing to the time-sensitive nature of broadcast transactions and the need for regulatory certainty, the waiver standard would include a menu of qualifying incubator events

containing at least some easily quantifiable items. The menu of activities should include items such as:

- Sale or donation of a commercial radio station to a qualified entity on the condition that the recipient of a donated station certify that it will hold the station license for a period of three years following closing of the transaction effectuating the donation, subject to exceptions for economic distress or subsequent sale or donation to another qualified entity;¹
- Five years of an LMA for an independent programmer on an FM HD-2 or HD-3 channel, with the independent programmer obligated to pay the licensee no more than the licensee's actual out-of-pocket expenses associated with operation of the subchannel;
- Underwriting, including financing of one year of operations and the in-kind provision of technical or engineering assistance or equipment that enables the re-activation and restoration to full service of a dark commercial or noncommercial station licensed to an eligible entity where the licensee or permittee certifies that it is otherwise unable to resume or commence service prior to the date on which the license or permit would be cancelled by operation of law;²
- Arranging for the donation of a noncommercial station to an Historically Black College or University (HBCU), an Hispanic Serving Institution (HSI), an Asian American Serving Institution (AASI) or a Native American Serving Institution (NASI);
- Providing loans, loan guarantees, lines of credit, equity investments, or other direct financial assistance to a qualified entity to cover more than 50% of the purchase price of a radio station;
- Another action that the company seeking a waiver demonstrates is likely to enhance radio station ownership opportunities for qualified entities.

¹ A "qualified entity" would be defined as a for-profit that satisfies the Small Business Administration's standards for "Small Disadvantaged Businesses (SDBs)", or a non-profit entity that would satisfy the same standards.

² In cases involving in-kind provision of technical or engineering assistance or equipment, the incubating broadcaster would also be required to create a working capital fund for use by the station returning to service. The amount to be contributed to the working capital fund would vary based on market size, along the following lines: markets 1-10 (\$200,000); markets 11-50 (\$100,000); markets 50-150 (\$75,000), and markets below 150 (\$50,000).

Incubation could be used without limit for waivers of the AM or FM subcaps in FCC Defined Markets (ranked by Arbitron), and could be used for waivers of the overall caps up to these limits: (a) ownership of an additional four stations in each of the 16 markets with 65 or more stations; (b) ownership of an additional two stations in each of the 12 markets with between 55 and 64 stations; and (c) ownership of one additional station in each of the other FCC Defined Markets.

- **REQUESTED ACTION:** NPRM in the 2010 Quadrennial Review docket, MB 09-182, and in the Diversity Docket, MB 07-294.

3. Clarify that eligible entities can take up to 18 months to construct major modifications of authorized facilities [proposal 31].

- **REQUESTED ACTION:** Further R&O, or Clarification Order, in the Diversity Docket, MB 07-294.

4. Establish an AM Transition Federal Advisory Committee (or task the FCC's Advisory Committee on Diversity) to make recommendations for the use of TV Channels 5/6 as a new home for most AM and LPFM stations [proposal 47].

- **REQUESTED ACTION:** Public Notice manifesting the Chairman's commitment to establish the FAC. If the Chairman prefers to have the Diversity FAC address the issue, the requested action would be to instruct the Diversity FAC to do so.

5. Extend all civil rights rules (EEO, transactional non-discrimination, advertising non-discrimination, procurement non-discrimination) to all platforms [proposal 61]; create a new Civil Rights Branch of the Enforcement Bureau with enforcement and compliance staff for the EEO, transactional, advertising and procurement nondiscrimination rules across all platforms [proposal 62].

- **REQUESTED ACTIONS:** NPRM on cross-platform issues (e.g., extending the cable procurement rule to broadcast and telecom); Public Notice announcing organizational changes made to Part 0 of the Rules.

6. Relax broadcast foreign ownership restrictions (47 U.S.C. §310(b)(4)) [proposal 23]. The Commission would specify its intention to apply, case by case, a hard limit of 40% if the interest is voting, and 49% if the interest is nonvoting.

- **REQUESTED ACTION:** New comment window in response to the pending Diversity and Competition Supporters (MMTC et al.) Petition for Partial Reconsideration in the Diversity Docket (MB 07-294), filed June 18, 2008.

7. Grant the Katrina Petition and require multilingual emergency broadcasting on a “designated hitter” model during and in the critical days after emergencies such as hurricanes [un-numbered].

A radio station serving as a designated hitter would air programming in another language during regular segments throughout the hour (e.g. “on the eights”) in cooperation, where possible, with other radio stations in the market which broadcast in that language (utilizing, for example, their staffs) when, during or in the wake of the emergency, there is no other source of emergency radio programming in the covered language. Covered languages would consist of those (which are spoken by 5% of the market’s population or 50,000 people in the market, whichever is less (approximating analogous federal voting rights policies). This initiative could be effectuated by requiring states to amend their EAS plans, many of which are in need of modernization in any event, to require broadcasters to coordinate regarding the designated hitter process and to make delivery of auxiliary power to foreign language stations a priority in the event of a disaster. Further, the Commission could express its willingness to offset a radio station’s costs of service as a designated hitter in an actual emergency by waiving or reducing subsequent regulatory fees for that station until the amount of fees waived or reduced equals the station’s cost of having served as a designated hitter.

- **REQUESTED ACTION:** Further NPRM in EB Docket 04-296 et al. on a fast track.